

Before the  
Administrative Hearing Commission  
State of Missouri



JEWEL NIES,

Petitioner,

vs.

DIRECTOR, DEPARTMENT OF  
INSURANCE, FINANCIAL INSTITUTIONS  
AND PROFESSIONAL REGISTRATION,

Respondent.

No. 13-1696 DI

**DECISION**

The Director of the Department of Insurance, Financial Institutions and Professional Registration (the “Director” and the “Department,” respectively) had cause to deny Jewel Nies an individual insurance producer license because she was convicted of a felony involving moral turpitude, and she failed to report to the Director that she had been criminally prosecuted for such crime within thirty days of her initial pretrial hearing.

**Procedure**

On September 23, 2013, Nies filed a complaint to appeal the Director’s September 16, 2013 decision refusing her renewal application for an individual insurance producer license. The Director filed an answer to the complaint on October 22, 2013, and on December 6, 2013, filed a motion for summary decision and suggestions in support. We gave Nies until December 20, 2013 to respond to the motion, but she did not do so.

Regulation 1 CSR 15-3.446(6) provides that we may decide this case without a hearing if the Director establishes facts that Nies does not dispute and entitle the Director to a favorable decision. Facts may be established through admissible evidence. 1 CSR 15-3.446(6)(B). Nies does not dispute the evidence the Director submitted in support of his motion, which includes certified copies of court records and the Director's authenticated records. Therefore, we make our findings of fact from the undisputed admissible evidence submitted by the Director in support of his motion.

### **Findings of Fact**

1. The Department issued Nies a resident insurance producer license on June 16, 1993. Her license expired on June 16, 2013.
2. On February 19, 2010, Nies was operating a motor vehicle in Chesterfield, Missouri. Her vehicle was struck on the passenger side by another vehicle in an intersection. Both occupants of the second vehicle were injured and taken to a hospital for treatment. Nies was administered three different field sobriety tests by the Chesterfield Police Department, and performed poorly. She provided a breath sample at the police station that showed a blood alcohol content of .175, more than twice the legal limit of .08. Nies admitted consuming four glasses of wine prior to the accident, and told the arresting officer she had "definitely had too much to drink."<sup>1</sup>
3. On February 19, 2010, in a case captioned *State v. Jewel Nies*, St. Louis County Circuit Court Case No. 10SL-CR01794, Nies was charged with Assault 2<sup>nd</sup> Degree – Operating a Vehicle While Intoxicated Resulting in Injury, a Class C felony, in violation of § 565.060 RSMo (Supp. 2009) ("the 2012 felony conviction").

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<sup>1</sup> Certified Court Records from the case are contained in the Director's Exs. 2, 2A, and 3.

4. On May 4, 2012, Nies pled guilty to the felony charge.
5. On July 13, 2012, the court sentenced Nies to five years in the custody of the Department of Corrections, suspended execution of the sentence, and placed Nies on five years' probation.
6. On June 10, 2013, the Department received from Nies an incomplete electronic resident insurance producer license renewal application (the "Application"). On June 18, Nies' Application became complete when she submitted all required documentation to the Department.
7. In the section of the Application entitled "Background Questions," Background Question No. 1 asks, "Have you ever been convicted of a crime, had a judgment withheld or deferred, or are you currently charged with committing a crime, which has not been previously reported to this insurance department?"
8. Nies responded "yes" to Background Question No. 1, and disclosed the 2012 felony conviction.<sup>2</sup>
9. Nies did not report the 2012 felony conviction to the Director within thirty days of July 13, 2012, when she was sentenced.
10. Nies did not report the 2012 felony conviction to the Director prior to her June 10, 2013 Application.
11. On September 16, 2013, the Director issued an order refusing to renew Nies' Application.
12. On September 23, 2013, Nies filed a complaint with this Commission seeking review of the Director's decision refusing her Application.

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<sup>2</sup> Ex. 2A.

## Conclusions of Law

We have jurisdiction over the case. § 621.045.<sup>3</sup> When deciding a motion for summary decision, we view the facts and the inferences from those facts in the light most favorable to the non-moving party. The burden is on the movant to establish both the absence of a genuine issue of material fact and that he is entitled to a favorable determination as a matter of law. *ITT Commercial Fin. Corp. v. Mid-Am. Marine Supply Corp.*, 854 S.W.2d 371, 376 (Mo. banc 1993).

The Director maintains his refusal to issue a license to Nies is established by §§ 375.141.1(2), (6), and 375.141.7, which provide in pertinent part:

1. The director may suspend, revoke, refuse to issue, or refuse to renew an insurance producer license for any one or more of the following causes:

\* \* \*

(2) Violating any insurance laws, or violating any regulation, subpoena or order of the director or of another insurance commissioner in any other state;

\* \* \*

(6) Having been convicted of a felony or crime involving moral turpitude[.]

7. Within thirty days of the initial pretrial hearing date, a producer shall report to the director any criminal prosecution for a felony or a crime involving moral turpitude of the producer taken in any jurisdiction. The report shall include a copy of the indictment or information filed, the order resulting from the hearing and any other relevant legal documents.

§ 375.141.1(2) - Violation of insurance laws; § 375.141.7 –  
Failure to report felony conviction

The Director argues that Nies violated § 375.141.7 and that such violation is ground to refuse her Application. We agree.

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<sup>3</sup> Except as otherwise noted, statutory references are to the 2012 Cumulative Supplement to the Missouri Revised Statutes.

Not only did Nies fail to report to the Director that she was under criminal prosecution for a felony within thirty days of her initial pretrial hearing date,<sup>4</sup> she failed to report this information at any time prior to her June 10, 2013 Application. These facts establish Nies violated § 375.141.7, which is, itself, grounds for the Director to refuse her Application.

Nies' violation of § 375.141.7, an insurance law, is further cause for the Director to refuse renewal of her insurance producer license pursuant to § 375.141.1(2).

§ 375.141.1(6) – Conviction of a felony or crime of moral turpitude

The certified court records offered by the Director establish that Nies pled guilty and was convicted of a Class C felony, Assault 2<sup>nd</sup> Degree – Operating a Vehicle While Intoxicated Resulting in Injury. Therefore, cause exists to refuse her Application pursuant to § 375.141.1(6).

The Director further argues Nies' crime involved moral turpitude, providing an additional basis for denial of her Application under this subsection. Moral turpitude is not defined in Chapter 375, but the concept exists in other disciplinary contexts and has been examined by Missouri courts. For example, in attorney disciplinary cases, the Supreme Court has “long defined moral turpitude as ‘baseness, vileness, or depravity’ or acts ‘contrary to justice, honesty, modesty or good morals.’”<sup>5</sup>

Not all criminal acts are acts of moral turpitude,<sup>6</sup> and not all acts of moral turpitude are criminal ones. Missouri courts have examined several types of criminal acts in license discipline cases and held that certain ones always constitute acts of moral turpitude, others may, and some never do. In *Brehe*, the court noted three classifications of crimes:

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<sup>4</sup> While the record before us does not indicate the date of Nies' initial pretrial hearing date, we infer from the evidence that it must have occurred prior to July 13, 2012, the date she was sentenced.

<sup>5</sup> *In re Duncan*, 844 S.W.2d 443, 444 (Mo. banc 1993) (citing *In re Frick*, 694 S.W. 2d 473, 479 (Mo. banc 1985) and others). See also *Brehe v. Mo. Dep't of Elem. and Secondary Educ.*, 213 S.W.3d 720, 725 (Mo. App. W.D. 2007) (same definition used in discipline of teaching certificate).

<sup>6</sup> *Id.*

1. crimes that necessarily involve moral turpitude, such as fraud (Category 1 crimes);
2. crimes “so obviously petty that conviction carries no suggestion of moral turpitude,” such as illegal parking (Category 2 crimes); and
3. crimes that “may be saturated with moral turpitude,” yet do not necessarily involve it, such as willful failure to pay income tax or refusal to answer questions before a congressional committee (Category 3 crimes).<sup>7</sup>

Category 1 crimes, such as murder, rape, and fraud, are invariably crimes of moral turpitude, and Category 3 crimes require inquiry into the circumstances.<sup>8</sup>

A person commits assault in the second degree if she, “[w]hile in an intoxicated condition...operates a motor vehicle in the state and, when so operating, acts with criminal negligence to cause physical injury to another person than himself[.]”<sup>9</sup> A person acts with “criminal negligence” when she “fails to be aware of a substantial and unjustifiable risk that circumstances exist or a result will follow, and such failure constitutes a gross deviation from the standard of care which a reasonable person would exercise in the situation.”<sup>10</sup>

The Director cites no authority for the proposition that the felony of Assault 2<sup>nd</sup> Degree – Operating a Vehicle While Intoxicated Resulting in Injury is invariably considered a Category 1 crime, nor do we find any. While we do not find Nies’ 2012 felony conviction necessarily involved moral turpitude, we consider whether the crime falls into Category 3 and examine the circumstances.

Nies’ guilty plea is an admission of the facts alleged in the information,<sup>11</sup> which establishes that Nies consumed four glasses of wine, got behind the wheel of a car, and with a

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<sup>7</sup> *Brehe*, 213 S.W.3d at 725 (quoting *Twentieth Century Fox Film Corp. v. Lardner*, 216 F.2d 844, 852 (9<sup>th</sup> Cir. 1954)).

<sup>8</sup> *Brehe*, 213 S.W.3d at 725.

<sup>9</sup> § 565.060.1(4), RSMo (Supp. 2009).

<sup>10</sup> § 562.016.5, RSMo 2000.

<sup>11</sup> *Wallace v. State*, 308 S.W. 3d 283, 286-87 (Mo. App. S.D. 2010)(internal citation omitted).

blood alcohol content nearly twice the legal limit, was involved in an accident that caused injury to others. In so doing, she acted with criminal negligence by failing to heed the substantial and unjustified risk of injury to herself or the public, conduct that showed “baseness, vileness, or depravity in the private and social duties which a man owes to his fellowman or to society in general.”<sup>12</sup> Therefore, we conclude Nies’ felony was a Category 3 crime, saturated with moral turpitude due to the circumstances presented. The Director had cause to refuse renewal of the Application pursuant to § 375.141.1(6).

*Director’s Discretion to Deny License under § 374.051.1*

We have found the Director had cause to deny Nies’ Application under §§ 375.141.1(2), (6), and 375.141.7. Section 374.051.1 provides, in relevant part:

Any applicant refused a license or the renewal of a license by order of the director under sections 374.755, 374.787, and 375.141 may file a petition with the administrative hearing commission alleging that the director has refused the license. The administrative hearing commission shall conduct hearings and make findings of fact and conclusions of law in determining whether the applicant may be disqualified by statute. *Notwithstanding section 621.120, the director shall retain discretion in refusing a license or renewal and such discretion shall not transfer to the administrative hearing commission.*

(Emphasis added.)

Having found cause for refusal of Nies’ Application under §§ 375.141.1(2), (6), and 375.141.7, we must uphold the Director’s order.

**Summary**

As the Director had cause to deny Nies an individual producer license pursuant to §§ 375.141.1(2), (6), and 375.141.7, we grant the Director’s motion for summary decision. Because

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<sup>12</sup> *In re Frick*, 694 S.W. 2d at 479.

we defer to the Director's order refusing her application, this fully disposes of Nies' appeal. We cancel the hearing.

SO ORDERED on January 16, 2014.

\s\ Mary E. Nelson  
MARY E. NELSON  
Commissioner